

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1248 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHOGILAL GANESHDAS PATEL

Versus

DIRECTOR OF TECHNICAL EDUCATION

Appearance:

MR BN PATEL for Petitioners

MS SIDDHI TALATI for Respondents No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/09/97

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioners, in all seven in number, Lecturers in Electrical Department in the Engineering Colleges of the Government of Gujarat, filed this special civil application and prayer has been made for quashing and setting aside the condition put in the resolution of the respondent No.2 dated 11-12-1979, annexure 'B' that

their pay should not be fixed on the basis of promotion and appointment to the post of higher responsibilities and duties on upgrading them as Lecturers and such condition consequently included in resolutions at annexures 'C' and 'D' to be declared as illegal, null and void. Further prayer has been made by the petitioners for direction to the respondents to fix their pay in the pay scale of the post of Lecturer with effect from 1-4-1979 giving benefit of promotion as if they have been promoted to the said post from the lower cadre of Assistant Lecturer. Last prayer has been made for the direction to the respondents to fix up the seniority in the cadre of Lecturers considering them, having been promoted on and with effect from 1-4-1979 on this post according to their inter-se seniority in the lower cadre of Assistant Lecturers.

3. The facts of the case are that in the Engineering Colleges of the State of Gujarat there are posts of Assistant Lecturers, Lecturers, Associated Professors and Professors. At the relevant time, the pay scale of the post of Assistant Lecturer was of Rs.650-1040 whereas the pay scale of the post of Lecturer was of Rs.700-1600. The petitioners entered in the services of Government as Assistant Lecturers in the Engineering Colleges in Electrical Department. The statement showing details about their service particulars together with their qualifications are being given in annexure 'A' to this special civil application.

4. The respondent No.2 passed a resolution on 9-12-1982 deciding thereunder to upgrade the posts of Assistant Lecturers to the posts of Lecturers with effect from 1-4-1979. The eligibility for fitment in the pay scale of Lecturers as on 1-4-1979 has been given out in the said resolution. Only the Assistant Lecturers who had reached the stage of Rs.700/- in the pay scale of Assistant Lecturers on 1-4-1979 and who fulfil all the requisite eligibilities for promotion to the posts of Lecturers were eligible for upgradation to the posts of Lecturers. Under the resolution dated 14th March, 1983, the respondent No.2 decided not to fix the pay of Assistant Lecturers upgraded as Lecturers in pursuance of the resolution dated 9th December, 1982.

5. The grievance of the petitioners is that consequently the respondent No.1 under its order dated 16th December, 1983 fixed the pay of several Assistant Lecturers upgraded as Lecturers, by fixing the pay of the concerned employee at a stage below their actual salary drawn in the old scale in the upgraded scale of

Rs.700-1600 and the amount deficit to make pay equal to the pay drawn in the old scale was added as personal pay by applying Rule 51 of Bombay Civil Services Rules. The petitioners' grievance is that the respondents have wrongly fixed the pay of the petitioners in the pay scale of Lecturers and as per the Government Resolution dated 30th May, 1975, the fixation of pay, due to the revision of the pay scale, should be made by fixing the pay in the revised pay scale at a stage next above the existing pay and as such, the respondents should have fixed the pay of the petitioners in the new pay scale i.e. the pay scale of Lecturers at a stage next above the pay drawn in the old scale by them. It has next been submitted that the post of Assistant Lecturer is a post of lower cadre whereas the post of Lecturer is a post of higher cadre carrying higher pay scale. Moreover, the qualifications for appointment to the post of Lecturer is much higher than the qualifications for appointment to the post of Assistant Lecturer. The Assistant Lecturer is a Class-III post where as the post of Lecturer is a Class-II post and is a Gazetted post in the Gujarat Education Service. The channel of promotion has been provided to the post of Lecturer from the feeder cadre of Assistant Lecturer. After giving all these facts, the petitioners submitted that the post of Lecturer is a higher post carrying higher responsibilities and duties than the post of Assistant Lecturer. Therefore, the petitioners are entitled, what they prayed for, on their upgrading as Lecturers for all the benefits available on being promoted from the post of Assistant Lecturer to the post of Lecturer and accordingly the pay of the petitioners should have been fixed as on 1-4-1979 in the cadre of Lecturer. The next grievance has been made that the seniority should have been given in the cadre of Lecturer to the petitioners by treating them to be the Lecturers from 1-4-1979 and not with reference to the date on which the promotions have been made.

6. Reply to this special civil application has been filed by the respondents and under the direction of this Court further replies have been filed. The respondents have contested the claim of the petitioners. The respondent-State in the reply has stated that the resolution of upgradation of the post of Assistant Lecturer to the post of Lecturer with effect from 1-4-1979 has come on 9th December, 1982. In accordance with the recruitment rules, prior to this 9th December, 1982 on the basis of seniority and eligibility the promotions to the posts of Lecturers have been made from feeder cadre of Assistant Lecturer. The petitioners were given the promotions as per their position in the

seniority to the post of Lecturers. As many of them have been transferred from Ahmedabad and posted at different places in the State of Gujarat they declined the promotions and in their place the persons junior to them have been promoted. It has next been submitted that it is not the case of promotion of the petitioners to the posts of Lecturers but under the resolution of 9th December, 1982, the post of Assistant Lecturer was upgraded to the post of Lecturer and they acquired the status of Lecturers from 1-4-1979 but the fact that the persons who has been given the promotion in regular channel could not have been deprived of their accrued benefits. The petitioners were also given the promotion but they declined and now by virtue of this upgradation what they really want is the promotion which they earlier have forgone. It has further been contended that it is not the case of promotion and as such the petitioners are not entitled for fixation of their pay in the pay scale of Lecturers at par with the fixation to be made of the Assistant Lecturers who have been promoted in regular channel of promotion.

7. I call the Director of Technical Education of Government of Gujarat in the Court to explain the matter as at one point of time the Government advocate who was appearing for the respondents was unable to clear the points raised by the Court. In response to that direction, the Additional Director of the Department appeared and he has given out that the post of Assistant Lecturer is an inferior post and the Assistant Lecturers are given the teaching work of Engineering graduate classes in Laboratory only and when they worked for sufficiently longer period as Instructors in the Laboratory they are given the regular teaching work. Even after their upgradation, the Additional Director stated, for years together the petitioners were continued to do the same work which they were doing as Assistant Lecturers. As it was not the case of promotion and only the case of upgradation of the post, for the purpose of fixation of the pay, the post was not taken to be the higher post carrying higher responsibilities and duties and accordingly the fixation has not been made as per the rule which is provided for fixation of the pay of promotees on his promotion to the higher post. Lastly, it is contended that it is a case of giving of the concessions to the petitioners and as such while giving those concessions the Government was within its competence to put any reasonable condition. By virtue of this upgradation what the respondents have contended that many of the persons in the cadre of Assistant Lecturer came in the cadre of Lecturer much earlier than what

otherwise they would have in the regular channel of promotion. So to avoid giving of double benefits to such persons, this condition has put. Otherwise also this condition is justified.

8. So far as the petitioner No.5 Shri Bhagwat Bhaurao Kadam is concerned, there is no dispute that during the pendency of this special civil application he has been directly selected for the post of Professor. So nothing now survives in this special civil application so far as the petitioner No.5 is concerned. The petitioners No. 6 and 7 have got their voluntary retirement during the pendency of this special civil application and they are reported to have joined Nirma Institute. Similarly the petitioner No.1 also voluntarily retired but it is not known where he has gone. It is also not in dispute that all the petitioners during the pendency of this special civil application have been promoted to the post of Associated Professor but still the counsel for the petitioners contended that the seniority in the cadre of Lecturer may have a bearing on their future promotions to the posts of Professors and as such the promotion to the post of Associated Professor is hardly of any significance and petition by virtue of that fact alone does not become infructuous. I find sufficient merits in this contention of the counsel for the petitioners. The seniority of Associate Professor is relevant for the purpose of further promotion to the post of Professor and those persons were given the promotion only on the basis of their seniority as reflecting in the cadre of Lecturer and so still this grievance survives in this special civil application.

9. First of all I may take the ground raised by the counsel for the petitioners regarding putting of the condition that the upgradation of Assistant Lecturers as Lecturers will not be taken to be a promotion. The resolution dated 9th December, 1982 provides for the upgradation of the post of Assistant Lecturer to the post of Lecturer from 1-4-1979. From further documents of the respondents produced on record, it is clear that it was a case of upgradation of the post of Assistant Lecturer with effect from 1-4-1979. Though it has not come out what were the reasons for upgradation of the post of Assistant Lecturer to the post of Lecturer but during the course of arguments it has been given out that to remove the stagnation, upgradation of the post has been made. Once the upgradation of the post has been ordered then certainly it may give two fold reliefs to the existing Assistant Lecturers. One is, who are sufficiently senior

in their case it removes their stagnation and so far as the other persons who are though very junior and also not stagnated they will get the earlier chance of raising to the pay scale and status of Lecturer. As it was only the case of upgradation of the post of Assistant Lecturer to that of Lecturer, I find sufficient merits in the contention of Smt. Siddhi Talati that it is a concession which has been extended to the Assistant Lecturers and reasonable condition could have been put for the fixation of their pay on the upgraded post. Moreover, this grievance of the petitioners otherwise also does not survive. The petitioners because of their seniority in the cadre of Assistant Lecturers were given the promotion to the post of Lecturers but they did not only want the promotion but also the place of their choice and as they have been transferred to elsewhere from Ahmedabad they have forgone their promotions. The other persons though junior to them were given the promotions. They have been sent to different places where they joined. Prior to 09th December, 1982, it is not in dispute that the petitioners second time on their turn were given the promotions and some of them have accepted as for this time they have been given posting at Ahmedabad. So it is not the case where the petitioners otherwise would not have got the benefits but because of their own cause they have forgone their promotion and situation has arisen that the petitioners promotions would have been deferred and in fact their promotions have been deferred without their being any fault on the part of the respondents.

10. It is different matter that because of resolution of 9th December, 1982 they got the benefit of upgrading to the status of Lecturer from 1-4-1979. Now when this upgradation has been given the petitioners started to extend their hands and they claim not only the fixation of their pay as Lecturer on 1-4-1979 treating it to be a case of promotion but at the same time the seniority. So far as the fixation of the pay is concerned, as stated earlier, it was because of concession and it cannot be claimed as of right. Such a condition could have been put and it cannot be said to be arbitrary which calls for interference of this Court sitting under Article 226 of the Constitution. So far as the seniority is concerned, if we go by the fact that the petitioners otherwise would have been junior to those Assistant Lecturers who have been given promotion earlier to them they cannot be allowed to fill up that gap which is a result of their own action, by referring to their claim of seniority to be reckoned from 1-4-1979.

11. Taking into consideration the totality of the

facts of this case, I do not find any substance in this special civil application.

12. In the result, this special civil application fails and the same is dismissed. The petitioners are directed to pay Rs.2000/- by way of costs of this petition to the respondent -State. The State Government is directed to recover this amount of costs from the petitioners and thereafter deposit the same in the Chief Minister's Relief Fund and produce a copy of receipt of deposit of the said amount in that fund, before this Court. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

zgs/-